

# Keller | Postman

September 11, 2023

**VIA ECF**

The Honorable Denise L. Cote  
United States District Court Judge  
Southern District of New York  
500 Pearl Street, Room 1910  
New York, New York 10007

Re. *In Re: Acetaminophen – ASD–ADHD Products Liability Litigation*, Case No. 1:22-md-03043 (S.D.N.Y.) – Plaintiffs’ Response to Defendants’ Letter Regarding FDA Response to Statement of Interest, Dkt. 1114

**This Document Relates To:** All Cases

Dear Judge Cote:

This letter is in response to the one submitted by Defendants a few hours ago, in which they requested a status conference “to discuss the path forward for this litigation.” Dkt. 1114. Given that the Court has denied that request, Dkt. 1115, Plaintiffs refrain from responding to various accusations in Defendants’ letter, though of course we are prepared to provide any additional information the Court requires.

We note, however, that Defendants’ suggestion that the decision of the United States to *decline* to submit a statement of interest is somehow an *affirmation* of Defendants’ position makes little sense given the facts. First, prior to the start of expert depositions, Plaintiffs offered the United States access to the expert reports and the opportunity to attend the 12 expert depositions taken since, Dkt. 789, only to have the Defendants later in the same day encourage the United States not to do so, Dkt. 794. More recently on August 31, 2023, Plaintiffs provided to the United States a detailed explication of their position on the scientific evidence, together with certain supporting material not subject to the protective order posted to a secure link. *See* Dkt. 1113. The United States did not access the supporting material electronically. Defendants point out that the United States referred to prior assessments of the FDA, but of course those assessments, which preceded Plaintiffs’ letter, were also made without review of Plaintiffs’ evidence. In short, as the United States put it, “it is for the Court, not this Office, to review the admissibility of expert or other evidence in these matters.” Dkt. 1105 at 1. Plaintiffs look forward to the opportunity to address that issue with the Court.

Respectfully submitted,

/s/ Ashley Keller

Ashley C. Keller (*Pro Hac Vice*)

KELLER POSTMAN LLC

150 N. Riverside Plaza LLC, Ste. 4100

# Keller | Postman

Chicago, Illinois 60606  
(312) 741-5220  
ack@kellerpostman.com

WATTS GUERRA LLC  
Mikal C. Watts (*Pro Hac Vice*)  
Millennium Park Plaza RFO  
Ste. 410, C112  
Guaynabo, Puerto Rico 00966  
(210) 447-0500  
mcwatts@wattsguerra.com

THE LANIER LAW FIRM  
W. Mark Lanier (*Pro Hac Vice*)  
Tower 56  
126 East 56<sup>th</sup> St., 6<sup>th</sup> Floor  
New York, New York 10022  
(212) 421-2800  
mark.lanier@lanierlawfirm.com